IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 356 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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SURESHBHAI CHHOTELAL SHARMA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 356 of 2002

MR HR PRAJAPATI for Petitioner No. 1-2

MR DESAI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/09/2002

ORAL JUDGEMENT

1. The revisioners are he owners of vehicle No.GJ-1-X-5857, which came to be seized by police along with contents. The tanker contained naphtha which also is owned by the revisioners. The tanker came to be intercepted and seized by police on apprehension that the contents of the tanker are stolen property. After the seizure, a report was made to the learned Judicial Magistrate, First Class, at Dahod and the seized material was kept with the police. Thereafter, an application was made by the revisioners before the learned Judicial Magistrate, First Class, vide Criminal Misc. Application No.44 of 2002 under Section 457 of the Code of Criminal Procedure for return of the said tanker and contents thereof. The learned Judicial Magistrate, First Class observed that the tanker belongs to the revisioners, but so far as the contents of the tanker are concerned, when it was seized, it was indicated to be solvent. The sample was sent for chemical analysis and the report also indicates that it is solvent whereas the case of the

revisioners has been it is naphtha and, therefore, it is doubtful whether the contents belong to the owner of the tanker or not. It was also observed that, requisite document about the purchase of the contents is also not produced. The learned Magistrate observed that, if the tanker is returned, a question would arise about storing the contents thereof and, therefore, the application was rejected.

2. Learned Advocate Mr. Prajapati submitted that there is no dispute about the ownership of the tanker being that of the revisioners - the applicants before the Lower Court. He also submitted that he has documents to indicate that the contents of the tanker were purchased by them for their business. It is submitted that, after the initial seizure of the tanker under Section 41(1)(d) of the Code of Criminal Procedure and the contents thereof under Section 102 of the Code, there has been no prosecution whatsoever either for the tanker or for the contents thereof. He, therefore, urged that the order may be revised and the tanker and the contents thereof may be ordered to be returned to the revisioners.

3. Learned Additional Public Public Prosecutor, Mr. Desai, on instructions, conceded to the fact that there has been no complaint or prosecution in respect of the tanker or the contents thereof after its seizure.

4. Considering rival side contentions, there appears no dispute about the fact that the revisioners are the owners of the tanker in question. Copies of the requisite documents are also produced on record of the revision application. So far as the contents of the tanker are concerned, the revisioners claim ownership. But there is no conclusive proof to indicate that the contents belong to the revisioners for the reason that, according to the revisioners, the contents of the tanker were naphtha, for which bills are produced, whereas the F.S.L. report indicate that the contents were not naphtha, but solvent. Therefore, the bills by which the ownership of the contents of the tanker is claimed cannot be said to be that of the contents of the tanker. However, the fact remains that there is no claimant of the contents of the tanker. There is no prosecution or other proceedings in respect of the contents of the tanker despite the authority having come to know about this and, therefore, at this stage, this Court is inclined to hand over the contents of the tanker to the person from whom it is seized, namely, the revisioners. The contents are valued at Rs.12,000/-. By way of abundant caution, some condition in this regard can be

imposed. Hence, the following order.

5. The order of the learned Judicial Magistrate, First Class, at Dahod, dated the 2nd September, 2002, in Criminal Misc. Application No.44 of 2002 is hereby set aside. Tanker No.GJ-1-X-5857 and contents thereof shall be returned to the revisioners on condition that the revisioners shall execute a bond of Rs.15000/- with a surety of like amount for a period of two months to the satisfaction of the Court below for preserving the contents of the tanker. The contents of the tanker shall be preserved in the same condition for a period of two months and shall be made accessible and available to either police officers or officers of other Government departments if need arises during this period. Rule is made absolute.

6. Direct service is permitted.

[A.L. DAVE, J.]

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